

Daniel D. Harshman (SBN# 177139)
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Attorneys for Plaintiff
PSI Corporation

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND BRANCH**

PSI CORPORATION (f/k/a/ FRIENDLYWAY
CORPORATION, f/k/a BIOFARM, INC.),

Plaintiff,

vs.

ALEXANDER VON WELCZEK, HENRY LO,
MICHAEL DRAPER, and FRIENDLYWAY
AG,

Defendants.

FRIENDLYWAY, INC., KARL
JOHANNSMEIERS, PACIFIC CAPSOURCE,
INC., and DERMA PLUS, INC.,

Nominal Defendants.

Case No. C 07-02869 SBA

**DECLARATION OF DANIEL D.
HARSHMAN IN SUPPORT OF
REQUEST TO ENTER DEFAULT OF
DEFENDANT DERMA PLUS, INC.**

I Daniel D. Harshman, declare:

1. I am an attorney licensed to practice before the Courts of the State of California and before the United States District Court for the Northern District of

1 California. I am a member of the law firm of Cozen O'Connor, counsel of record for the
2 Plaintiff PSI Corporation. I have personal knowledge of the facts set forth herein, and if
3 called as a witness, would and could testify to the truth of the matters set forth.

4 2. Defendant Derma Plus, Inc. was twice served with a copy of the summons
5 and complaint. Derma Plus, Inc. was first served on July 6, 2007 by delivering a copy of
6 the summons and complaint at its principal place of business. Derma Plus, Inc. was
7 served a second time on July 31, 2007 by delivering the summons and complaint to its
8 registered agent for service, Michael Draper. A true and correct copy of the Proof of
9 Service on July 6, 2007 is attached hereto as **Exhibit "A"** and is on file with the Court.
10 [Document No. 49]. A true and correct copy of the Proof of Service on July 31, 2007 is
11 attached hereto as **Exhibit "B"** and is on file with the Court. [Document No. 53].

12 3. The time allowed by law for the Defendant Derma Plus, Inc. to respond to
13 Plaintiff's complaint has expired. Measured from the first date of service on July 6,
14 2007, twenty days expired on July 26, 2007. Measured from the second date of service
15 on July 31, 2007, twenty days expired on August 20, 2007.

16 4. As of the date of this Declaration, I have not received a responsive
17 pleading from the Defendant Derma Plus, Inc., nor have I received a request from
18 Derma Plus, Inc. or its counsel seeking an extension of time to respond to the Plaintiff's
19 complaint.

20 I declare under penalty of perjury under the laws of the State of California
21 that the foregoing is true and correct.

22 Executed this 22nd day of August, 2007 at San Francisco, California.


23
24 
25 _____
26 Daniel D. Harshman

EXHIBIT “A”

Daniel D. Harshman (SBN 177139)
 COZEN O'CONNOR
 425 California Street, Suite 2400
 San Francisco, California 94104
 Telephone: 415.617.6100
 Facsimile: 415.617.6101
 Email: dharshman@cozen.com

Attorneys for Plaintiff
 PSI CORPORATION

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

PSI CORPORATION, f/k/a/ FRIENDLYWAY
 CORPORATION, f/k/a BIOFARM, INC.,

Plaintiff,

vs.

ALEXANDER VON WELCZEK, HENRY LO,
 MICHAEL DRAPER, and FRIENDLYWAY AG,

Defendants..

Case No.: . C 07-02869 SBA

PROOF OF SERVICE
Dermaplus, Inc.

FRIENDLYWAY, INC., KARL JOHANN SMEIER,
 PACIFIC CAPSOURCE, INC., and DERMAPLUS,
 INC.,

Nominal Defendants.

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AO 440 (Rev. 8/01) Summons in a Civil Action

RETURN OF SERVICEService of the Summons and Complaint was made by me¹

DATE

JULY 31, 2007

Name of SERVER

MARGO EVASHEVSKI

TITLE

PRIVATE INVESTIGATOR

Check one box below to indicate appropriate method of service

☒ Served Personally upon the Defendant. Place where served: MICHAEL DRAPER, AGENT FOR DERMAPLUS
1227 37th AVE, SAN FRANCISCO, CA 94122

☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

Name of person with whom the summons and complaint were left:

☐ Returned unexecuted:

☐ Other (specify):

STATEMENT OF SERVICE FEES

TRAVEL

SERVICES

\$ TOTAL
\$ 375

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on

7/31/07
Date

Margo Evashevski
Signature of Server

479 15TH AVE, SAN FRANCISCO, CA 94118
Address of Server

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

EXHIBIT "B"

Daniel D. Harshman (SBN# 177139)
 Charles E. Wheeler (SBN# 82915)
 Cozen O'Connor
 425 California Street, Suite 2400
 San Francisco, CA 94104
 Telephone: (415) 617-6100
 Facsimile: (415) 617-6101
 E-mail: dharshman@cozen.com
 cwheeler@cozen.com

Attorneys for Plaintiff
 PSI Corporation

**IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND BRANCH**

PSI CORPORATION (f/k/a/ FRIENDLYWAY
 CORPORATION, f/k/a BIOFARM, INC.),

Case No. C 07-02869 SBA

Plaintiff,

PROOF OF SERVICE

vs.

(Dermaplus, Inc.)

ALEXANDER VON WELCZEK, HENRY
 LO, MICHAEL DRAPER, and
 FRIENDLYWAY AG,

Defendants.

FRIENDLYWAY, INC., KARL
 JOHANNSMEIERS, PACIFIC CAPSOURCE,
 INC., and DERMA PLUS, INC.,

Nominal Defendants.

DANIEL D. HARSHMAN, ESQ. (SBN 177139) CHARLES WHEELER COZEN O'CONNOR 425 CALIFORNIA STREET, SUITE 2400 SAN FRANCISCO, CA 94104 Telephone: (415) 617-6100 Facsimile: (415) 617-6101 Attorney(s) for: PLAINTIFF, PSI CORPORATION Reference: 682229		
UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA		
PSI CORPORATION f/k/a FRIENDLYWAY CORPORATION f/k/a BIOFARM. INC. <p style="text-align: right;">Plaintiff (s)</p> <p style="text-align: center;">v.</p> ALEXANDER VON WELCZEK, HENRY LO, MICHAEL DRAPER, and FRIENDLYWAY AG <p style="text-align: right;">Defendant (s)</p>	CASE NUMBER: C 07 2869 EDL <p style="text-align: center;">PROOF OF SERVICE SUMMONS AND COMPLAINT</p> (Use separate proof of service for each person/party served)	

1. At the time of service I was at least 18 years of age and not a party to this action and I served copies of the (*specify documents*):
 - a. ☒ summons ☒ complaint ☐ alias summons ☐ first amended complaint
 in a civil case ☐ second amended complaint ☐ third amended complaint
 - ☒ other (*specify*): CIVIL COVER SHEET; NOTICE OF ASSIGNMENT OF CASE TO A UNITED STATES MAGISTRATE JUDGE FOR TRIAL; (BLANK) CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE JUDGE; (BLANK) DECLINATION TO PROCEED BEFORE A MAGISTRATE JUDGE AND REQUEST FOR REASSIGNMENT TO A UNITED STATES DISTRICT JUDGE; ORDER SETTING INITIAL CASE MANAGEMENT CONFERENCE AND ADR DEADLINES; STANDING ORDER; (BLANK) STANDING ORDER RE CASE MANAGEMENT CONFERENCE; STANDING ORDER FOR ALL JUDGES OF THE NORTHERN DISTRICT OF CALIFORNIA, CONTENTS OF JOINT CASE MANAGEMENT STATEMENT; REASSIGNMENT ORDER
2. Person served:
 - a. ☒ Defendant (*name*): DERMA PLUS, INC.
 - b. ☒ Other (*specify name and title or relationship to the party/business named*): JOHN R., DESCRIBED AS A WHITE MALE, EARLY 40'S, BLOND HAIR, BLUE EYES, 6'1", 210LBS.,
 - c. ☒ Address Where papers were served: 1227 37TH AVENUE, SAN FRANCISCO, CA 94122
3. **Manner of service** in compliance with (*the appropriate box must be checked*):
 - a. ☒ Federal Rules of Civil Procedure
 - b. ☐ California Code of Civil Procedure
4. **I served** the person named in item 2:
 - a. ☒ **By Personal service.** By personally delivering copies. If the person is a minor, by leaving copies with a parent, guardian, conservator or similar fiduciary and to the minor if at least (12) years of age.
 1. ☒ **Papers were served on** (*date*): JULY 6, 2007 at (*time*): 12:27PM
 - b. ☐ **By Substituted service.** By leaving copies:
 1. ☐ (**home**) at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household, at least 18 years of age, who was informed of the general nature of the papers.
 2. ☐ (**business**) or a person apparently in charge of the office of place of business, at least 18 years of age, who was informed of the general nature of the papers.
 3. ☐ **Papers were served on** (*date*): _____ at (*time*): _____

4. ☐ by mailing (by first-class mail, postage prepaid) copies to the person served in item 2(b) at the place where the copies were left in Item 2(c).
5. ☒ papers were mailed on (date): JUNE 14, 2007
6. ☒ due diligence. I made at least three (3) attempts to personally serve the defendant.
- c. ☐ **Mail and acknowledgment of service.** By mailing (*by first-class mail or airmail, postage pre-paid*) copies to the person served, with two (2) copies of the form of Waiver of Service of Summons and Complaint and a return envelope, postage prepaid to the sender. (**Attach completed Waiver of Service of Summons and Complaint**).
- d. ☐ **Service on domestic corporation, unincorporated association (including partnership), or public entity. (F.R.Civ.P.4(h)) (C.C.P. 416.10)** By delivering, during usual business hours, a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment of by law to receive service of process and, if the agent is one authorized by statute and the statute so requires, a mailing, by first-class mail, postage prepaid, a copy to the defendant.
- e. ☐ **Substituted service on domestic corporation, unincorporated association (including partnership), or public entity. (C.C.P. 415.20 only)** By leaving during usual office hours, a copy of the summons and complaint in the office of the person served with the person who apparently was in charge and thereafter by mailing (*by first-class mail, postage prepaid*) copies to the persons at the place where the copies were left in full compliance with C.C.P. 415.20. Substitute service upon the California Secretary of state requires a court order. (**Attach a copy of the order to this proof of service**).
- f. ☐ **Service on a foreign corporation.** In any manner prescribed for individuals by FRCP 4(f).
- g. ☐ **Certified or registered mail service.** By mailing to an address outside California (*by first-class mail, postage prepaid, requiring a return receipt*) copies to the person served. (**Attach signed return receipt or other evidence of actual receipt by the person served**).
- h. ☐ **Other** (specify code section and type of service):
5. **Service upon the United States, and Its Agencies, Corporations or Officers.**
- a. ☐ by delivering a copy of the summons and complaint to the clerical employee designated by the U.S. Attorney authorized to accept service, pursuant to the procedures for the Office of the U.S. Attorney for acceptance of service, or by sending a copy of the summons and complaint by registered or certified mail addressed to the civil process clerk at the U.S. Attorneys Office.
Name of person served:
Title of person served:
Date and time of service: (date): _____ at (time): _____
- b. ☐ By sending a copy of the summons and complaint by registered or certified mail to the Attorney General of the United States at Washington, D.C. (**Attached signed return receipt or other evidence of actual receipt by the person served**).
- c. ☐ By sending a copy of the summons and complaint by registered or certified mail to the officer, agency or corporation (**Attach signed return receipt or other evidence of actual receipt by the person served**).
6. At the time of service I was at least 18 years of age and not a party to this action.
7. Person serving (*name, address and telephone number*):

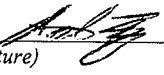
ALBERTO REYES/#885/SAN FRANCISCO
WORLDWIDE NETWORK, INC.
520 TOWNSEND STREET, SUITE D
SAN FRANCISCO, CA 94103
(415) 503-0900

- a. Fee for service: \$
- b. ☐ Not a Registered California Process Server
- c. ☐ Exempt from registration under B&P 2235(b)
- d. ☒ Registered California Process Server

8. ☐ I am a California sheriff, marshal, or constable and I certify that the foregoing is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Date: JULY 6, 2007

(Signature) 

PROOF OF SERVICE

I, the undersigned, declare: I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. I am employed in the County of San Francisco, California, in which county the within mentioned service occurred. My business address is Cozen O'Connor, 425 California Street, Suite 2400, California, CA 94104.

On the date set forth below, I served the foregoing document(s) on the parties, through their attorneys of record, addressed as set forth below:

- **Request to Enter Default Against Defendant Derma Plus, Inc.;**
- **Declaration of Daniel D. Harshman in Support of Request to Enter Default of Defendant Derma Plus, Inc.**

☒ **(By First Class Mail)** I caused each such envelope, with first-class postage thereon fully prepaid, to be deposited in the United States mail at San Francisco, California.

☐ **(By Facsimile)** I caused each individual on the attached list to be served via facsimile to the numbers indicated on the attached Service List.

☐ **(By Personal Service)** I caused each such envelope, with courier charges prepaid, if applicable, to be personally delivered by messenger and/or in-house messenger to the offices of each addressee.

☐ **(By Federal Express/UPS)** I caused each such envelope, with shipping charges fully prepaid, to be delivered to a Federal Express/UPS pick up box at San Francisco, California for next business day delivery.

SEE ATTACHED SERVICE LIST

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America and of the State of California that the foregoing is true and correct.

Executed August 22, 2007, at San Francisco, California.

By: 

Maria J. Uhl

SERVICE LIST

Lawrence A. Weiss, Esq. Attorneys for Defendant
Ryan D. Marsh, Esq. friendlyway AG
Holly B. Baudler
Heller Ehrman LLP Service via E-Filing Program
275 Middlefield Road
Menlo Park, California 94025-3506
Telephone: 650/324-7000
Facsimile: 650/324-0638
Email: Weiss@hellerehrman.com
Ryan.Marsh@hellerehrman.com
Holly.Baudler@hellerehrman.com

Harry G. Lewis, Esq Attorneys for Defendants
Brian V. Donnelly, Esq. Alexander von Welczeck and
Cornestone Law Corp. Henry Lo
595 Market Street, Suite 2360
San Francisco, California 94105 Service via E-Filing Program
Telephone: 415/974-1900
Facsimile: 415/974-6433

Carl Lippenberger, Esq. Attorneys for Nominal Defendant
Lippenberger, Thompson, Welch, Soroko & Gil Karl Johannsmeier
235 Pine Street, Suite 1300
San Francisco, California 94104-2733 Service via E-Filing Program
Telephone: 415/262-1200
Facsimile: 415/262-1212

Steven A. Dillick, Esq. Attorney for Defendant Michael Draper
1 Maritime Plaza, Suite 1040
San Francisco, California 94111-3413

Dermaplus, Inc. Defendant
1227 – 37th Avenue
San Francisco, California 94122

Pacific Capsource, Inc. Defendant
1110 Salem Rose Court
Las Vegas, NV 89144